

# TAXATION OF FEMA DISASTER MITIGATION GRANTS

Mr. BOND. Mr. President, last week I introduced a bill, S. 586, as an alternative to my previous bill, S. 290, regarding the taxation of FEMA disaster mitigation grants. Both bills are designed to prevent the IRS from taxing these grants.

With the help of Senators VITTER, TALENT, VOINOVICH, NELSON, FEINSTEIN, and LANDRIEU, I introduced this new legislation as a companion to Congressman MARK FOLEY's bill, H.R. 1134, in House of Representatives. I commend Mr. FOLEY for his hard work and dedication to this proposal. Also, I commend the Department of Treasury for recognizing the serious nature of this issue and committing to work with Congress to resolve it.

This new legislation adds additional language to ensure that FEMA disaster mitigation grant recipients do not abuse the tax-free nature of the grant by capitalizing on the increased value of his/her property. In addition, the new language provides for a prospective effective date.

It is important to note, however, that the President's budget proposal gives the Treasury Department the administrative authority to apply the policies of S. 586 and H.R. 1134 to cases involving mitigation payments where the statute of limitations has not expired. It is my understanding that the Department of Treasury has agreed to issue a notice to the IRS clearly indicating that, in accordance with the policies of S. 586 and H.R. 1134, those taxpayers who are in receipt of these mitigation grants prior to the enactment of this legislation will not be subject to extra tax liabilities.

This legislation came about as a result of a direct threat by the IRS to tax these disaster mitigation grants. As I have said before, I am absolutely stunned at this latest antic by the IRS. The last thing Americans who are working to prevent potential destruction from floods, tornadoes, and hurricanes need is for Government-grant funding to be subject to tax. My bill ensures that the IRS's disaster tax does not see the light of day.

I ask unanimous consent that two letters from the Department of Treasury be printed in the RECORD. These letters are written to the chairmen of both the Senate Finance Committee and the House Ways and Means Committee expressing support for S. 586 and H.R. 1134 and committing to prevent retroactive taxation at the request of Congress.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,  
Washington, DC., March 14, 2005.

Hon. CHARLES GRASSLEY,  
Chairman, Committee on Finance, U.S. Senate,  
Washington, DC.

DEAR CHAIRMAN GRASSLEY: I am writing to express the Administration's support for legislation to provide tax relief to property owners who participate in Federal Emer-

gency Management Agency (FEMA) hazard mitigation projects, specifically H.R. 1134 and S. 586 sponsored by Representative Mark Foley and Senator Bond respectively.

FEMA provides grants through State and local governments to mitigate potential damage from future natural hazards. Examples of mitigation projects include demolition, retro-fitting, and elevation of buildings. As a result, these grant projects are distinguishable from other grant programs in that their goal is to avoid the larger costs of damage that otherwise would be compensated in the future out of the taxpayer funded Disaster Relief Fund, National Flood Insurance Program, other Federal assistance programs, and State, local and private sources. Through hazard mitigation programs, FEMA has funded community mitigation projects affecting individual properties for over fifteen years. In particular, FEMA makes grants under the Flood Mitigation Assistance program, the Hazard Mitigation Grant Program, and the Pre-Disaster Mitigation program.

Under current law, gross income generally includes all income from whatever source derived. Generally, the mitigation grants from FEMA (or construction services paid by grants) represent income to the recipients. Under specific statutory and administrative exceptions, gross income does not include certain government payments made to individuals in response to need resulting from particular disasters. However, grants under the three FEMA mitigation programs described above often are made in anticipation of future disasters and other natural hazards and are not need based. Consequently, the mitigation grants generally do not qualify for these specific exceptions.

Similarly, if a property owner participates in a FEMA-assisted acquisition of his or her property, the property owner generally is required to include in income any gain from the sale of the property (subject to the \$250,000/\$500,000 exclusion from income of gain from the sale of a principal residence).

By explicitly excluding FEMA mitigation grants from income, the Foley/Bond legislation provides tax relief to home and property owners that receive the grants. Because participation by property owners in FEMA projects is voluntary, there is concern that owners of at-risk properties might decline to participate because of the potential tax obligation under current law, thus adding to long term taxpayer funded recovery costs. This presents a potential impediment to the policy Congress initially sought to implement through these grant programs.

Finally, it is also my understanding that the effective dates of the Foley/Bond legislation are prospective and that the tax exemption for these FEMA mitigation grants will be recognized upon date of enactment of the bill. Because the issue of retroactivity is also one of fairness, it is our hope that Congress, consistent with the Administration's budget proposal, will encourage the Treasury Department to provide retroactive relief to those individuals who have utilized FEMA mitigation grants in the past.

I commend the House for acting quickly to address this issue and urge the Congress to send this legislation to the President for his signature.

Sincerely,

JOHN W. SNOW.

DEPARTMENT OF THE TREASURY,  
Washington, DC, March 14, 2005.

Hon. WILLIAM THOMAS,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN THOMAS: I am writing to express the Administration's support for legislation to provide tax relief to property

owners who participate in Federal Emergency Management Agency (FEMA) hazard mitigation projects, specifically H.R. 1134 and S. 586 sponsored by Representative MARK FOLEY and Senator BOND respectively.

FEMA provides grants through State and local governments to mitigate potential damage from future natural hazards. Examples of mitigation projects include demolition, retro-fitting, and elevation of buildings. As a result, these grant projects are distinguishable from other grant programs in that their goal is to avoid the larger costs of damage that otherwise would be compensated in the future out of the taxpayer funded Disaster Relief Fund, National Flood Insurance Program, other Federal assistance programs, and State, local and private sources. Through hazard mitigation programs, FEMA has funded community mitigation projects affecting individual properties for over fifteen years. In particular, FEMA makes grants under the Flood Mitigation Assistance program, the Hazard Mitigation Grant Program, and the Pre-Disaster Mitigation program.

Under current law, gross income generally includes all income from whatever source derived. Generally, the mitigation grants from FEMA (or construction services paid by grants) represent income to the recipients. Under specific statutory and administrative exceptions, gross income does not include certain government payments made to individuals in response to need resulting from particular disasters. However, grants under the three FEMA mitigation programs described above often are made in anticipation of future disasters and other natural hazards and are not need based. Consequently, the mitigation grants generally do not qualify for these specific exceptions.

Similarly, if a property owner participates in a FEMA-assisted acquisition of his or her property, the property owner generally is required to include in income any gain from the sale of the property (subject to the \$250,000/\$500,000 exclusion from income of gain from the sale of a principal residence).

By explicitly excluding FEMA mitigation grants from income, the Foley/Bond legislation provides tax relief to home and property owners that receive the grants. Because participation by property owners in FEMA projects is voluntary, there is concern that owners of at-risk properties might decline to participate because of the potential tax obligation under current law, thus adding to long term taxpayer funded recovery costs. This presents a potential impediment to the policy Congress initially sought to implement through these grant programs.

Finally, it is also my understanding that the effective dates of the Foley/Bond legislation are prospective and that the tax exemption for these FEMA mitigation grants will be recognized upon date of enactment of the bill. Because the issue of retroactivity is also one of fairness, it is our hope that Congress, consistent with the Administration's budget proposal, will encourage the Treasury Department to provide retroactive relief to those individuals who have utilized FEMA mitigation grants in the past.

I commend the House for acting quickly to address this issue and urge the Congress to send this legislation to the President for his signature.

Sincerely,

JOHN W. SNOW.

# CONDEMNING VIOLENCE AND CRIMINALITY IN NORTHERN IRELAND

Mr. DODD. Mr. President, I rise today to join my colleagues, Senators

KENNEDY, MCCAIN and others in condemning ongoing violence and criminality by the Irish Republican Army.

Our actions are prompted in part by our meeting yesterday with the sisters and fiancé of Robert McCartney, a Catholic resident of Belfast who was brutally murdered on January 30, by individuals who are members of the IRA. These six young women, Catherine McCartney, Paula Arnold, Gemma McMacken, Claire McCartney, Donna Mary McCartney, and Bridgeen Karen Hagans, have publicly challenged the code of silence that generally surrounds IRA activities, including the brutal murder of their brother, an innocent bystander.

These brave women came to Washington seeking our help to ensure that this heinous act is not forgotten as time passes and that justice is done, not only on behalf of their brother, but for all the people of Northern Ireland—Protestant and Catholic alike. They have called upon the IRA and Sinn Féin to stop covering up Robert's murder, and to begin immediately to cooperate directly with the Northern Ireland Policing Service in order to bring to justice those responsible for this heinous crime.

In response to their appeal we believe that it is important that the United States Senate express itself on their behalf. That is why we have asked the Senate to act on the pending resolution. That is why President Bush met personally with these brave women at the White House earlier today—to highlight the importance of justice being done.

Our actions on this resolution and the President's meeting earlier today put the world on notice that we condemn such acts. In addition, with this resolution we call on the leadership of Sinn Féin to insist that everyone responsible for this murder be brought to justice and that anyone with knowledge about the crime cooperate fully and directly with the Police Service of Northern Ireland in making that possible.

As an Irish American, I look forward to the annual celebration of Saint Patrick's Day. Earlier today we participated in the Annual Speaker's luncheon with visiting Prime Minister of Ireland, Bertie Ahern to commemorate this day.

I must tell you that we did so with less exuberance than in past years when there was frankly more to be joyful about.

Ten years ago on this day, there was excitement and promise at our Saint Patrick's Day celebration—the 1994 IRA ceasefire had been in place for more than 6 months and there existed a positive climate conducive to finding a political resolution to a quarter century of sectarian violence.

Seven years ago, in 1998, there was even more concrete evidence that sectarian violence was over as we were literally days away from the parties signing the Good Friday Accords which

they did on April 9 of that year. That document was crafted by the political parties under the able leadership of former Majority Leader George Mitchell with the active involvement of President Bill Clinton, and Prime Ministers Tony Blair and Bertie Ahern. It spelled out in black and white an agenda and institutions for delivering justice and equality to both traditions within a framework of inclusive self-government.

Our annual Saint Patrick's Day celebrations since 1998 have been an opportunity to take stock of the progress toward full implementation of the Good Friday Accords. I for one have approached this day each year with the hope that we might finally declare that the Accords were fully functioning, and that violence and terror were no longer a part of the fabric of Northern Ireland's society.

Sadly, this Saint Patrick's day we struggle to call the glass half full with respect to progress on the Accords. The Northern Ireland Assembly is in suspension, the assembly's Executive is vacant. The parties are deadlocked over what must be done to restart the process. Collectively, Northern Ireland's political leaders must accept responsibility for the political impasse that now exists. But Sinn Féin and the IRA carry a heavier burden than others for restarting the process. Sinn Féin, as an organization, must commit itself fully and unequivocally to solely political means to advance its agenda of equality and inclusion. There is no place in a democracy for a political organization to have its own private paramilitary organization. Sinn Féin cannot call itself a democratic organization if it does not sever all ties with the IRA, an organization which espouses, condones, and covers up unlawful acts such as murder and robbery. And, if the IRA is in fact committed to the full implementation of the Peace Accords as it has publicly stated, then it must fully and verifiably decommission its weapons and go out business entirely.

In my opinion, nothing short of these actions is going to repair the damage done to the peace process by the recent acts of criminality by the IRA. Public demonstrations by the Catholic community in Belfast in support of the McCartney sisters' quest for justice made it patently obvious that whatever support might have existed for the IRA in that community exists no longer. It is very clear that the people of Northern Ireland want to live in peace—they want an end to vigilantism and intimidation—they want transparency and the rule of law. They want a future for themselves and their children.

Today, Northern Ireland is a struggling democracy—at a crossroad. Elections have occurred. Elected representatives have been chosen. The mechanisms of self-government are clearly spelled out in the Good Friday Accords. Everyone knows what needs to be done

to move the process forward. I hope and pray that those with the power to make a difference will have the courage to do the right thing. The people of Northern Ireland deserve and expect nothing less.

#### LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last week, a 15-year-old high school student was charged with assault after attacking a fellow student. According to police, the attacker yelled disparaging remarks about the victim's sexual orientation before the fight broke out. The victim was taken to the doctor with bruised ribs after he was repeatedly kicked.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### OPPOSING THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT

Mr. KYL. Mr. President, it has come to my attention that persons outside of the Senate have told Senators that I do not oppose S. 147, the latest incarnation of a bill that would create a tribal government for Native Hawaiians. This is untrue; it is probably being said because I agreed that the issue could be brought to the Senate floor for a vote. I continue to believe that this bill is profoundly unconstitutional and poses serious moral and political problems. I oppose this bill, and urge my colleagues to do so.

I ask unanimous consent that the following three news columns by Bruce Fein, constitutional scholar and former Reagan administration Justice Department official, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Mar. 11, 2005]

#### THE PINEAPPLE TIME BOMB (By Bruce Fein)

It is not because Native Hawaiians should be cherished less but that equality under the law should be loved more that the Akaka Bill to create a race-based government should be opposed. The Senate Committee on Indian Affairs blithely approved the legislation Wednesday without seriously examining its constitutionality. The bill previously